

July 13, 2007

Scott J. Cooper
PO Box 22327
Indianapolis, Indiana 46222-0327

Re: Formal Complaint 07-FC-156; Alleged Violation of the Access to Public Records Act by the Marion Superior Court, Probation Department

Dear Mr. Cooper:

This is in response to your formal complaint alleging the Marion Superior Court, Probation Department (“Department”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by redacting part of an electronic mail message in response to your request for public records received May 16, 2007. I find that the Marion Superior Court, Probation Department did not violate the Access to Public Records Act.

BACKGROUND

You allege the Department violated the APRA by redacting a portion of an email dated March 22, 2007 from Robert L. Bingham to Christine Kerl and Debra Farmer. You submitted a request for access to public records to the Department, and the Department received it on May 16, 2007.

While I do not have an indication the nature of your specific request, the Department in its response indicates the court produced 461 pages of copies of public records responsive to your request. One of those pages contained the above-mentioned email with approximately five lines of content redacted. The Department, in its letter to you dated June 1, 2007, denied the redacted portion of the email pursuant to Ind. Code 5-14-3-4(b)(6).

You submitted your complaint to this office on June 13, 2007. The Department submitted its response on June 27, 2007. I am attaching a copy of the response for your reference.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making are excepted from section 3(a) at the discretion of the public agency. IC 5-14-3-4(b)(6). When a public record contains both disclosable and nondisclosable information, the agency shall separate the material to be disclosed and make it available. IC 5-14-3-6(a).

The email message at issue here was sent by Mr. Bingham in response to an email message from Ms. Kerl, an employee of the Department, seeking guidance as to how to proceed on a particular issue. In response, Mr. Bingham, Chief Probation Officer, begins a sentence with "My advice to you is . . ." The remainder of the sentence, roughly five lines of text, is redacted. It is my opinion a sentence beginning "My advice to you is . . ." in an email from a supervisor to an employee in the same public agency in response to a request for guidance falls squarely into the exception for intra-agency deliberative material contemplated in section 4(b)(6).

The Department appears to have redacted only the portion of the email message containing an expression of opinion for the purpose of decision making as allowed under IC 5-14-3-4(b)(6). Of the remaining 460 pages of records, no further information has been redacted.

CONCLUSION

For the foregoing reasons, I find that the Marion Superior Court, Probation Department did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Robert Bingham, Chief Probation Officer, Marion Superior Court